IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6726 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VARAIYA RAJUBHAI LAGHUBHAI RAJPUT

Versus

STATE OF GUJARAT

Appearance:

MR DIVYESH SEJPAL for Petitioner

MR AJ DESAI GP for Respondents No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 08/02/2000

ORAL JUDGEMENT

Heard learned Advocate Mr. H. R. Prajapati for Mr. D.C. Sejpal on behalf of petitioner and learned

A.G.P. Mr. A. J. Desai for the respondents Nos. 1, 2 and 3.

1. The detention order dated 17.2.1999 passed by the respondent No. 2- District Magistrate, Bhavnagar against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 ("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution of India.

2. That the detention order could be executed on 1.6.1999 and the detenu/petitioner is in detention since then and committed to Central Jail, Baroda.

3. That the grounds of detention served and supplied to the petitioner/detenu under Section 9(1) of "PASA" Act, copy of which is produced at Annexure "B", inter-alia indicate that three criminal cases were registered against the petitioner at "B" Division, Bhavnagar Police Station on 10.10.1997, 12.12.1998 and 18.12.1998 respectively. The said cases are filed on the allegations that in respect to offences made punishable under Sections 323, 506(2) read with 114 of I. P. C. as well as under Sections 365, 147, 148, 325, 388, 341, 343 etc. and Section 385 read with 120 of I.P.C. That all cases are pending for trial.

Over and above, on assurance of their anonymity three witnesses have given statements dated 10.2.1999 in respect to anti-social activities of the petitioner/ detenu and have narrated the incidents, which are alleged to have occurred on 1.2.1999, 29.1.1999 and prior to 15 days of the date of statements respectively.

3. That on the basis of the said material, the respondent No. 2, as Detaining Authority, has come to the conclusion that the petitioner/detenu is a 'dangerous person' within the meaning of Section 2(c) of "PASA". That the enforcement of general provision of law being insufficient to prevent the petitioner from continuing his bootlegging activities, and thereby, in order to prevent the petitioner from continuing his such activities, the impugned order has been passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the bar on behalf of the petitioner that in the instant case, privilege claimed by the Detaining Authority under Section 9(2) of "PASA" in respect of three anonymous witnesses, can not be said to be a genuine privilege and

in the absence of any cogent and convincingness material, either in the grounds of detention or in a contemporaneous record exercise of such privilege is malafide, which has deprived the petitioner from making any effective representation, whereby, Constitutional mandate under Article 22(5) is violated and continued detention of the detenu is rendered illegal.

5. That in the matter of Jakirbhai Rahimbhai Nagori Vs. District Magistrate, Mehsana & Others, reported in 1996(1), GLH, P-300, this Court having referred the earlier Judgement of Division Bench rendered in the matter of Koli Ashwin Vs. State of Gujarat in Special Criminal Application No. 1812 of 1993 decided on 12th September, 1994, has observed that in order to exercise powers to claim privilege under Section 9(2) of "PASA", what is required for the Detaining Authority is that he must come to a subjective satisfaction himself and for that purpose, he must be able to point our either in the grounds or in the contemporaneous record that he had sufficient material before him to come to that subjective satisfaction. In the said matter, the statement of witnesses contained only one word " verified " used by Dy. S. P., who was asked to verify all the witnesses. However, there was no indication that the Detaining Authority himself has verified the fear expressed by the witness about any harm to his person or property, if his identity is disclosed and in the said context Court has held that claim of privilege on such facts can not be said to be genuine. It may also be noted that the said view was also expressed by Full Bench of this Court in the matter of Chandrakant N. Patel Vs. State of Gujarat and others, reported in 1994(1), GLR, P-761.

5. As observed hereinabove, on the facts, when it is held that privilege claimed by the Detaining Authority in respect of anonymity of three witnesses, as referred to in the grounds of detention, not being genuine, it has to be held that on account of such privilege, the detenu was deprived of his valuable right to make effective representation, whereby, Constitutional mandate under Article 22(5) is violated and the continued detention of the detenu is rendered illegal.

6. That the petitioner has raised specific groun vide para- 4(10) of the petition and though the Detaining Authority has filed an affidavit-in-reply dated 16.12.1999, there is no explanation to the said contention. Hence, on the basis of the said fact, I am constrained to hold that privileged claimed by the Detaining Authority in the instant case in respect to

three anonymous witnesses, not being genuine, the continued detention of the petitioner is required to be revoked.

7. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

8. On the basis of the foregoing discussion, the petition is allowed. The impugned order dated 17.2.1999, which could be executed on the petitioner on 1.6.1999 is hereby quashed and set aside. The petitioner/ detenu Varaiya Rajubhai Laghubhai Rajput is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute to that extent.

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PALLAV